

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

In the Matter of

Amendment of Section 73.202(b)
Table of Allotments
FM Broadcast Stations
(Mishicot, Wisconsin and
Gulliver, Michigan)

MM Docket No. 99-145

RM No. 9336

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

REPLY COMMENTS

Roy E. Henderson d/b/a Indian River Broadcasting Company ("Indian River")¹, by counsel, pursuant to 47 CFR §1.415(c), respectfully submits its *Reply Comments* in response to the Comments filed in connection with the Notice of Proposed Rule Making and Order to Show Cause, DA 99-868 ("NPRM") released on May 7, 1999, by the Chief, Allocations Branch. In support thereof, the following is stated:

I. INTRODUCTION

1. The NPRM set June 28, 1999 as the deadline for filing comments in connection with the proposal set out in the NPRM to allot Channel 234C3 to Mishicot, Wisconsin and substitute Channel 273C1 for Channel 234C1 at Gulliver, Michigan. Comments were filed by Bay-Lakes-Valley Broadcasters, Inc. ("Bay-Lakes") and Great Lakes Radio, Inc. ("Great Lakes").

¹ Indian River is an applicant for Channel 260A at Manistique, Michigan.

2. In its comments, Bay-Lakes supports the allotments proposed in the NPRM but also offers a Conditional Counterproposal based on an earlier filed petition that was rejected in the NPRM. Great Lakes, on the other hand, asks the Commission to guarantee the payment of what amounts to a \$168,456.40 windfall, in the name of reimbursement of expenses. Neither concept has any merit and both should be rejected by the Commission.

II. ARGUMENT

A. Bay-Lakes' Conditional Counterproposal Should Be Rejected

3. The Conditional Counterproposal proposed by Bay-Lakes is based on the following language:

Alternatively, in the event that a conflicting counterproposal is timely filed in this rule making proceeding or for other reasons the allotment plan proposed in the NPRM cannot be adopted...

Bay-Lakes Comments and Conditional Counterproposal, p. 2, ¶ 2. A look at the docket reveals that no party has, in fact, filed a timely counterproposal.²

Moreover, there is no "other reason" apparent from the record that would stand in the way of the proposal advanced in the NPRM. Therefore, Bay-Lakes' Conditional Counterproposal has no basis for being acted upon and should be rejected.

B. The Commission Should Not Become Embroiled In The Cost Of The Channel Change

4. It is a long standing rule that the Commission will not become involved in contractual disputes among parties. See, MCI Communications Corp.,

² See docket sheet attached hereto as Exhibit 1.

10 FCC Rcd. 1072 (1994). Setting the costs associated with a channel change involves the exercise of business judgments that are outside of the Commission's jurisdiction and best left to the courts. See, PCS 2000, L.P., 12 FCC Rcd. 1681, 1691 (1997). In the present case, Great Lakes has asked the Commission to fix the expenses associated with the proposed channel change. However, the Commission has no expertise or general interest in such costs and, thus, has no way of taking action in this area.

5. Great Lakes' request is unprecedented. Should the Commission entertain the request in this instance, it will be deluged by similar requests by parties involved in channel changes. It will become a *de facto* arbitrator, inserting itself into countless disputes involving channel change expenses. In sum, it would unnecessarily mire the Commission in a host of matters clearly outside of its proper jurisdiction.

6. A close look at this instant case should give the Commission reason enough to stay out of such disputes. There is no report by a professional engineer stating exactly what would be needed to effectuate the channel change. Instead, Great Lakes offers up its own shopping list of items including a \$50,000.00 marketing plan and what appears to be a new "next generation" FM antenna. Great Lakes has obviously failed to explore less costly alternatives and has given the Commission no basis whatsoever to "approve" its plan.

7. The Commission should adhere to its well established policy of staying out of contractual disputes among parties and deny Great Lakes' attempt to secure what appears to be a financial windfall from the channel change.

III. CONCLUSION

8. The Conditional Counterproposal proffered by Bay-Lakes cannot be accepted in this case because no party has filed a timely counterproposal and there is no basis for rejecting the proposal advanced in the NPRM. In the case of Great Lakes' request for pre-approval of \$168,456.40 in expenses for making the channel change, the Commission should refrain from entering an area over which it has traditionally asserted a lack of jurisdiction.

WHEREFORE, Roy E. Henderson d/b/a Indian River Broadcasting Company respectfully requests that the proposal contained in the NPRM be upheld, Bay-Lakes' Conditional Counterproposal be dismissed and Great Lakes' attempt to expand the jurisdiction of the Commission to approving the costs of channel changes be rejected.


July 13, 1999

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Respectfully Submitted,

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Roy E. Henderson d/b/a Indian River Broadcasting Company
Reply Comments
July 13, 1999

EXHIBIT 1



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Proceeding 99-145 Type Code: CO		Date Received: 06/28/99
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Proceeding 99-145 Type Code: RN		Date Received: 04/28/99
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CERTIFICATE OF SERVICE

I, Henry E. Crawford, do hereby certify that copies of the foregoing Reply Comments have been served by United States mail, postage prepaid this 13th day of July, 1999 upon the following:

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